PRESUMPTIONS AS EVIDENCE IN CRIMINAL CASES.—In two late cases, *Price* v. *U. S.*, 218 Fed. 149 and *Chambliss* v. *U. S.*, 218 Fed. 154, the accused, having offered no evidence as to his good character, requested the court to instruct the jury as follows: "You are instructed that the law presumes the good character of the accused, and such presumption is to be considered as evidence in favor of the accused in considering the question of his guilt or innocence." This the court refused to do. On appeal the former case was affirmed and the latter reversed on another ground, the majority of the court holding in both cases that when the defendant offers no evidence bearing on his character in a criminal case, there is no presumption of good character. In both cases the court was unanimous on the proposition that such a presumption, if admitted to exist, is not evidence.

The generally accepted rule is that when the defendant in a criminal case does not put his character in issue by offering evidence that it is good, there is no legal presumption that it is either good or bad. *Addison* v. *People*, 193 Ill. 405; *Griffin* v. *State*, 165 Ala. 29, 50 So. 962; *Danner* v. *State*, 54 Ala. 127; *People* v. *Johnson*, 61 Cal. 142; *People* v. *Lee*, 1 Cal. App. 172; *State* v. *Smith*, 50 Kan. 69; *People* v. *Bodine*, 1 Denio 315. These courts deny the existence of a presumption of the accused's good character as such and take the view that the presumption of good character exists only as a part of the presumption of innocence. Mr. CHAMBERLAYNE says it is a pseudo-presumption and adds, "It is probable that much of the presumption of good character is, in reality, an offshoot of the more general 'presumption of innocence'." CHAMBERLAYNE, EVIDENCE, § 1168. If this presumption exists it does so only in the sense that in the absence of proof of good character the state cannot attack, nor is the jury warranted in inferring that the accused's character is bad. There is some authority for the position that under these circumstances there is a presumption of good character existing in favor of the accused outside and independent of the presumption of innocence. *Mullen* v. *U. S.*, 106 Fed. 892; *U. S.* v. *Neverson*, 1 Mack. (D. C.) 152; *U. S.* v. *Guthrie*, 171 Fed. 528.

But whether we consider a presumption of good character exists as such, or as a part of the presumption of innocence, the question still remains—are these presumptions or either of them evidence which the jury may weigh and consider as other evidence admitted in the trial? A consideration of the nature and effect of presumptions would lead one to answer this question in the negative. A presumption has no probative value and is not evidence, being nothing more than a rule of law which assists a party in making out a prima facie case. Its force is spent when it calls forth evidence to rebut it. In reality a presumption takes something for granted and relieves the party in whose favor it operates from proving a part of his case, and calls upon the other party to go forward with the proof and overcome the thing taken for granted. *Lisbon* v. *Lyman*, 49 N. H. 563; *Vincent* v. *Mutual Life Assn.*, 77 Conn. 288; *U. S.* v. *Ross*, 92 U. S. 284; 8 COL. LAW REV. 127; ELLIOT, EVIDENCE, § 92-93; THAYER, PREL. TREAT. EVIDENCE, 563. But if there be a presumption of good character it is evidently different from other presumptions, because the state cannot overcome it either by

evidence, argument or instruction until the accused has first put his character in issue. As stated by Judge AMIDON in the *Price* case, supra, "The state may rebut the presumption of innocence, all its evidence is leveled directly at that presumption. But against the so-called presumption of good character the state is powerless." Since the state cannot of its own volition rebut or overcome this presumption, the presumption of good character must, if it exists at all, be a conclusive one, which it is safe to say nobody will admit.

The weight of authority also supports the principle that the presumption of good character (where it is recognized), and the presumption of innocence are not evidence. In *Durham* v. *State,* 128 Tenn. 636, 163 S. W. 447, the court, after stating that there is a presumption of good character, said, "We deem the error in this contention (that the presumption is evidence) to be in assuming that the presumption of good character may be conceived of * * * and that it may be resorted to as an independent probative element to reinforce the presumption of innocence." The recent decisions have also been quite uniform in holding that the presumption of innocence is not evidence. *Culpepper* v. *State,* (Okla. 1910) 111 Pac. 679; *Flowers* v. *State,* (Ala. 1911) 56 So. 98; *State* v. *Linhoff,* 121 Ia. 632. And also in holding that the presumption of innocence really means no more than that the burden of proof is on the state at all times to prove the accused is guilty beyond a reasonable doubt, and when the jury is fully instructed on reasonable doubt the failure to instruct on the presumption of innocence is not reversible error. *State* v. *Kennedy,* 154 Mo. 268; *People* v. *Graney,* 91 Mich. 648; *People* v. *Ostrander,* 110 Mich. 60; *Morehead* v. *State,* 34 Ohio St. 212; *Stevens* v. *Com.,* (Ky. 1898) 45 S. W. 76; WIGMORE, EVIDENCE, § 2511.

There is authority, however, that these presumptions are evidence. In *Mullen* v. *U. S.,* 106 Fed. 892, it was held that an instruction identical with the one refused in the principal case was proper. In this decision the court relied mainly upon *Coffin* v. *U. S.,* 156 U. S. 432, in which it was held error to refuse to instruct on the presumption of innocence, even though the jury were expressly charged that to convict they must be satisfied of the prisoner's guilt beyond a reasonable doubt. And in its opinion the court takes the position that the presumption of innocence is evidence. In accord with this view are *State* v. *Marston,* 82 Vt. 250 and *State* v. *Clark,* 83 Vt. 305. These decisions adhere to the statement of Mr. GREENLEAF that, "This legal presumption of innocence is to be regarded by the jury, in every case, as matter of evidence to the benefit of which the party is entitled." GREENLEAF, EVIDENCE, (16th Ed.) § 34.

The *Coffin* case has been much discussed and severely criticised, and its fallacy laid bare in an excellent article by Prof. THAYER on the "Presumption of Innocence in Criminal Cases" reported in THAYER'S PRELIMINARY TREATISE ON EVIDENCE, p. 551. In *Agnew* v. *U. S.,* 165 U. S. 36, it was held that the instruction, "This presumption (of innocence) remains with the defendant until such time, in the progress of the case, that you are satisfied of guilt beyond a reasonable doubt," was correct and practically covered a refused instruction to the effect "that the presumption of innocence is to be

regarded by the jury as matter of evidence to the benefit of which the party is entitled." This refused instruction is practically the same as the court upheld in the *Coffin* case and the ruling in the *Agnew* case would indicate that the presumption of innocence is not evidence but only a substitute for it. A presumption would not seem, therefore, to be evidence in its true sense. The jury cannot weigh a presumption nor can the court tell them what weight they should give it, for there is nothing to guide the court in this matter. W. R. R.

RECENT LABOR LEGISLATION.—Modern ideas upon the value of labor legislation tending to promote the public health and welfare are exemplified in the recent cases of *People* v. *The Klinck Packing Co.*, 52 N. Y. L. J. 1925, 47 Chi. Leg. News 233, and *Miller* v. *Wilson, Sheriff*, 35 Sup. Ct. ——. In the former case the New York Court of Appeals upheld the constitutionality of the "one day of rest in seven" law passed by the legislature in 1913. (Laws 1913, Ch. 740) which provided in substance that every employee in any factory or mercantile establishment should be allowed "at least twenty-four consecutive hours of rest in every seven consecutive days", with certain exceptions. At first sight this would not seem so restrictive of personal liberty as Sunday laws, which have been universally upheld (*Hennington* v. *Georgia*, 163 U. S. 229; *Petit* v. *Minnesota*, 177 U. S. 164) in that no special day upon which work is forbidden is set aside; but these laws have had the added religious element and the sanction of centuries pressed as reasons for their validity. The present law is entirely free from such elements, which would seem to carry it a step further than the Sunday laws. The decision is particularly interesting in view of the language in some prior New York cases on kindred points. See *In the Matter of Jacobs*, 98 N. Y. 98 and *People* v. *Williams*, 189 N. Y. 131. In the latter case the court said, in holding invalid a law prohibiting women from working in factories between 9 p. m. and 6 a. m., and commenting upon the frequency of such regulative laws, "it behooves the court firmly and fearlessly to interpose the barriers of their judgment". In the *Klinck* case the court says, "The doctrine that personal liberty must yield to what is supposed to be the public welfare has not waned any during recent years". It seems that seven years can change a viewpoint materially. In *Miller* v. *Wilson*, supra, the law provided that no female in certain enumerated employments should work more than eight hours in any one day and no more than forty-eight hours in any one week. (Calif. Stats. 1911, p. 473). The Supreme Court had numerous authorities upon which to base the decision and which argue along the same lines of reasoning, in *Muller* v. *Oregon*, 208 U. S. 412; *Hawley* v. *Walker*, 232 U. S. 718, and *Riley* v. *Massachusetts*, 232 U. S. 671, all upholding practically similar legislation; but here the available number of working hours in any one week is considerably lower than in any law to date, and still the regulation remains within legislative discretion. This alone, when considered in view of the language in *Lochner* v. *New York*, 198 U. S. 45, shows the adaptation of the judicial mind to the changes in industrial and commercial conditions which have arisen in a decade. Undoubtedly either the *Klinck* case or the